

ORDINANCE NO. 1880

**AN ORDINANCE REGULATING SMOKING IN THE CITY OF
HOMEWOOD, ALABAMA.**

BE IT ORDAINED by the City Council of the City of Homewood as follows:

Section 1. **PURPOSE.**

~~WHEREAS~~ WHEREAS, the United States Surgeon General has long warned smokers that smoking tobacco, or any other weed or plant is hazardous to their health; and

WHEREAS, evidence now substantiates the fact that smoke is a material annoyance, inconvenience and health hazard to nonsmokers who are present in confined areas, and reliable scientific studies assessed by the United States Environmental Protection Agency ("E.P.A.") have found that side stream and second hand tobacco smoke cause the death of at least 53,000 nonsmokers annually in the United States and is the leading cause of premature death and disability among nonsmokers; and

WHEREAS, numerous scientific studies have found that tobacco smoke is a major contributor to indoor air pollution; and

WHEREAS, reliable scientific tests, substantiated by numerous reports from the United States Surgeon General and the E.P.A., have shown that side stream and second hand smoke is a serious health hazard to nonsmokers, particularly babies, children, teens, the elderly, and individuals with health problems, including but not limited to those individuals suffering from cardiovascular disease and impaired respiratory functions; and

WHEREAS, scientific information has revealed that other health hazards are induced by exposure to tobacco including decreased exercise tolerance, increased allergic reactions, along with numerous forms of cancer, especially lung cancer; and

WHEREAS, tobacco smoking is a leading cause of fires, plus cigarette and cigar burns and ash stains on merchandise and fixtures cause economic losses to businesses, not to mention the added labor and personnel expense to "Corporate America" caused by side stream and second hand smoke to employees; and

WHEREAS, the National Center for Disease Control has concluded that more than 400,000 United States citizens die each year from tobacco-caused or related diseases and tobacco related illness cost businesses and individuals in the United States \$68 billion dollars per year; and

WHEREAS, local news reports say that over 46 million Americans smoke and at least twenty-five (25%) percent of Alabama's population smokes; and

WHEREAS, the National Institute on Drug Abuse has found that nicotine in tobacco products is a powerful addictive drug and identifies nicotine addiction as the most widespread example of drug dependence in the United States; and

WHEREAS, numerous United States Surgeons General have found that nicotine in tobacco products is as addictive as cocaine and heroin; and

WHEREAS, nationally recognized and respected retail stores and restaurants have recently begun to take action by prohibiting smoking in their establishments for both public health and business reasons.

NOW, THEREFORE, in order to better serve public health, safety and welfare, the declared purpose of this ordinance is to prohibit the smoking of tobacco, or any weed or plant in public places and places of employment in the city, except in designated smoking areas or facilities exempted from this ordinance.

Section 2. DEFINITIONS.

For the purposes of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (1) "Bar": An area which derives 75% or more of its gross income from the sale of alcoholic beverages for on-premises consumption and in which the serving of food is only incidental to the consumption of such beverage. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant dining area.
- (2) "City": The City of Homewood, Alabama.
- (3) "Dining Area": Any enclosed area containing a counter or tables upon which meals are served.
- (4) "Employee": Any person who is employed by an employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
- (5) "Employer": Any person which employs one (1) or more persons.
- (6) "Health Care Facility": Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions including but not limited to rehabilitation hospitals, or other clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist, and all specialists within these professions and psychologists and weight control clinics.
- (7) "Minor": An individual who is less than 19 years of age.
- (8) "Motion picture theater": A theater engaged in the business of exhibiting motion pictures.
- (9) "Owner": Shall mean and include the lessee, sublessee, assignee, part owner, joint owner, tenant in common, joint tenant, tenant by the entirety, managing agent, officers of the corporation or other person having the right of ownership or possession or the right to sell, rent or lease any real property.
- (10) "Person": Any person, firm, partnership, association, corporation, company or organization of any kind.
- (11) "Place of Employment": Any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to work areas, restrooms, employee lounges, conference rooms and employee cafeterias. A private residence does not constitute a "place of employment."
- (12) "Public Place": Any area, completely enclosed or otherwise, to which the public is invited or permitted, including but not limited to retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, stadiums, sports facilities, waiting

areas for any business, establishment, etc., restrooms, elevators, government or civic buildings, educational facilities, medical or health facilities, public transportation, libraries, museums, auditoriums, art galleries and meeting rooms; hotels and motels. A private residence does not constitute a "public place."

- (13) "Retail store": Any establishment whose primary purpose is to sell or offer for sale to consumers, not for resale, any goods, wares, merchandise, food for consumption off the premises, articles or other things, and all activities, operations and services connected therewith or incidental thereto. "Retail store" shall not include hotels, motels, restaurants, those restaurant facilities which are an integral part of a retail store, bars, lounges, catering establishments and other similar facilities.
- (14) "Retailer": Any person who operates a store, stand, booth, concession, or other place at which sales are made to purchasers for consumption or use of tobacco products.
- (15) "Smoke or Smoking": The act of burning, inhaling, exhaling or carrying any lighted tobacco product, weed, filler or plant of any kind in a cigarette, cigar, pipe, hookah or water pipe or in any other device and shall include carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment; or the lighting, emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind. A private residence does not constitute a "public place."
- (16) "Smoke-Free": Free of visible smoke, and not containing fumes and odors from smoking in sufficient concentrations to cause annoyance or distress to any nonsmoker in that area.
- (17) "Tobacco vending machine": Includes any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of coins, trade checks, slugs or credit cards.

Section 3. ***ENFORCEMENT.***

The provisions of this ordinance are enforceable by any duly authorized municipal code enforcement officer, police officer or fire department official, or as otherwise allowed by law.

Section 4. ***VIOLATION; PENALTY.***

Any person, firm, or corporation violating any provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished as provided for in Section 1-8 of the Code of Ordinances for the City of Homewood, Alabama, as amended. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. The business license of a person, firm or corporation shall be revoked following the second violation of the ordinance.

Section 5. ***NO SMOKING AREA AND SMOKING AREA DESIGNATION.***

- (1) No one shall be permitted to smoke in any of the following areas:
 - (a) In any municipal building or facility whether used, owned or leased by the City of Homewood.

(b) All areas under the control of the City, whether owned or leased including all city owned or leased vehicles and on city owned or leased property but not including public streets.

(c) In any public transportation vehicle.

(d) In any elevator, regardless of its capacity.

(e) In any health care facility, regardless of capacity, except that this prohibition shall not apply in the private enclosed working spaces or sleeping or living quarters of a person working in such facility where patients and members of the public are not normally present.

(f) In all facilities owned or leased by the city government in rooms or areas used by the public for public meetings (or in lobbies of those facilities) when public meetings are in session; and in private facilities where public meetings are called by city governmental bodies or agencies during the time such meetings are being held.

(g) In the spectator area of theaters (other than dinner theaters) and motion picture theater. This is to include the lobby area.

(h) Any educational facilities used for classes, sponsored by any person, firm or corporation, public or private.

(i) In any retail stores.

(j) All areas available to and customarily used by the general public in all business and nonprofit entities patronized by the public.

(k) Any restaurant or eating establishment used by the general public.

(2) The "no smoking" areas shall be kept clear of smoke.

(3) The owner or person in charge of any public place or place of employment may designate separate rooms or areas in which smoking is permitted, provided that:

i) There is no public access;

ii) The smoke in the designated room is not ventilated or commingled with separate non-smoking areas.

iii) no portion of the spectator area of any theater or movie theater shall be designated as a separate smoking area;

iv) no area shall be designated as a smoking area in which smoking is prohibited by the fire marshal or by other law, ordinance, or regulation;

v) in "*designated smoking*" areas, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas;

vi) "*designated smoking*" areas in health care facilities shall not include areas normally used by members of the public in their use of the facility;

Section 6. ***EXCEPTIONS.***

(a) The prohibitions contained above shall not apply to:

- (1) Private houses, apartments, condominiums, townhouses, patio homes, etc.; or
- (2) Individual private offices and/or individual private vehicles which are completely enclosed and occupied by only one employee; or
- (3) Private facilities of private social clubs; or
- (4) Bars as defined in Section 2; or
- (5) Retail stores or establishments which derive 75% or more of its gross income from the sale of tobacco products and accessories; or
- (6) Any facility or portion thereof during the hours in which the particular facility or portion thereof is not normally used by the public; or
- (7) Smoking by actors as part of a stage production; or
- (8) An entire room, hall, building or structure when such room, hall, building or structure is used for private functions, such as weddings, banquets and testimonial dinners, attendance at which is by invitation only, and where seating arrangements are under the control of the sponsor of the function and not of the owner or person in charge of the place. This does not apply to city owned property.

(b) Nothing in this section shall be deemed to amend or repeal applicable fire or health regulations.

(c) Any owner or manager of a business or other establishment subject to this ordinance may apply to the city council for an exemption from or modification of, this ordinance due to unique or unusual circumstances or conditions. Any exemption from or modifications of this Ordinance shall be approved by a majority vote of the City Council and shall be exclusive to and apply only to the business or establishment making such application.

Section 7. ***REGULATIONS REGARDING POSTING, ETC..***

(1) No person shall smoke in any public place or place of employment, as defined in this ordinance, which has been designated as a "*no smoking*" area. Such nonsmoking areas shall be identified by clearly, sufficiently and conspicuously posted "*no smoking*" signs and/or signs with the international "*no smoking*" symbol.

(2) Any person who smokes in a posted "*no smoking*" area is in violation of this ordinance.

(3) No person shall willfully destroy, remove or deface any sign posted in compliance with this ordinance, and any such prohibited conduct shall be a violation of this ordinance.

(4) Any facility, business, corporation, partnership, agency or area may be posted and designated in its entirety as a "*no smoking*" area by the owner or manager thereof.

(5) With the exception of the areas enumerated in Section 5, no public place, as defined in this ordinance, shall be designated as a smoking area in its entirety, or allow smoking to be conducted in any place other than clearly posted "*designated smoking*" areas.

(6) The "*designated smoking*" and "*no smoking*" area signs shall have letters of not less than one inch in height. The signs shall be posted not less than five feet, nor more than eight feet, above floor level and shall be of sufficient number and location to cause the message of at least one of the signs to be clearly visible, legible, and readable. Provided, however, that in any such location, the person in charge may orally inform all persons using the area of the nonsmoking regulations, in lieu of posting signs. The absence of such a "*no smoking*" or "*designated smoking*" area sign as required by this ordinance shall be a violation of this ordinance.

Section 8. **REGULATIONS OF SMOKING IN PLACES OF EMPLOYMENT**

(1) It shall be the duty of the owner, operator and/or manager of any facility, business, corporation, partnership, agency or vehicle within the purview of this ordinance to comply herewith. Such owner, operator or manager shall post or cause to be posted all "*no smoking*" and "*designated smoking*" area signs required by this ordinance, within 30 days of enactment of this ordinance.

(2) Such owner, operator or manager shall inform persons smoking in restricted areas that they are in violation of the law and shall promptly report such violators of the law to the proper authorities.

(3) It shall be the responsibility and duty of the owner, operator and/or manager of any facility, business, corporation, partnership or agency which employs an excess of two (2) employees to disseminate information

(4) Owners, managers and employers of public places and places of employment within the City, and its police jurisdiction, have the responsibility of providing smokefree areas for nonsmokers to the maximum extent possible within existing facilities, but such individuals are not required to make any structural or other physical modifications in providing these areas, except as specifically required by this ordinance.

(5) Every owner, manager and employer in the city within 90 days, except those exempted by this ordinance, shall adopt, implement and maintain a written smoking policy. The smoking policy shall contain, at a minimum, a statement providing that the employer shall attempt to reach a reasonable agreement, between the preferences of smoking and nonsmoking individuals along with a statement that smoking is prohibited except in clearly posted "*designated smoking*" areas. The policy shall accommodate the preference of any nonsmoker to work in a smoke free area.

(6) Any owner, manager or employer of any public place or place of employment within the City, or its police jurisdiction, who in good faith develops and promulgates a policy regarding smoking and nonsmoking in the workplace shall be deemed to be in compliance with this provision of this ordinance, provided that a policy which designates an entire workplace as a smoking area shall not be deemed a good faith policy.

Section 9. **RESTAURANT REGULATIONS.**

(1) Restaurants covered by the provisions of this ordinance shall be designated as nonsmoking, with the exception of that area of a restaurant that has open air dining. Open air dining is defined as an area that has at least two (2) walls completely open to exterior ventilation.

(2) A restaurant, facility or eating establishment may be designated in its entirety as a nonsmoking area by the owner or manger thereof.

(3) No restaurant or eating establishment, regulated by this law, may be designated as a smoking area in its entirety.

Section 10. **HOTEL AND MOTEL REGULATIONS.**

Smoking is prohibited in hotels and motels in the city, and its police jurisdiction, except:

(1) That portion of any hotel and motel which has been properly designated by hotel and motel management as a "smoking room" in the private rooms section of the hotel or motel.

Provided further that the percentage of guest rooms of the property designated as smoking rooms at any hotel or motel shall be limited to a maximum of fifty percent (50%) of the total number of private rooms in the hotel or motel following the effective date of this ordinance. In other words, at least fifty percent (50%) of the total number of private rooms in any hotel or motel in the city or its police jurisdiction, following the effective date of this ordinance, shall be "no smoking" rooms.

Section 11. **PUBLIC RESTROOMS.**

(1) Smoking is prohibited in all public restrooms in the City, and its police jurisdiction, whether or not the owner or manager of the facility has properly posted this area "public place" or "place of employment" as a "no smoking" area.

(2) It shall be unlawful, and a violation of this ordinance, for any owner or manager of a public place or place of employment, as defined in this ordinance, to fail to properly post all public restrooms under his, or her, maintenance and control as a "no smoking" area in accordance with the provisions of this ordinance.

Section 12. **COMMON AREAS OF MALLS.**

Notwithstanding any other provision of this ordinance, smoking is prohibited in the common area and corridors of all malls and public places within the City and its police jurisdiction. This is to include the entrance and exit of the mall and all public places for a minimum distance of fifty (50) feet.

Section 13. **TOBACCO PRODUCTS IN VENDING MACHINES.**

(a) To prevent the sale of tobacco products to minors, it is unlawful to install, place or permit the use of any tobacco vending machine in any establishment which is open to minors; provided however, that this section shall not apply to the installation and use by the proprietor, his agent or employees, of tobacco vending machines behind a counter or in some place in any establishment in which access by minors is prohibited by law; provided, further, this ordinance shall not apply to the installation and use of a tobacco vending machine in commercial buildings

of industrial plants where the public is not usually admitted and where such machines are intended for the sole use of the employees who are not minors.

(b) No retailer or employee of a retailer shall sell or permit to be sold cigarettes or other tobacco products to any individual suspected to be a minor. If the retailer or the retailer's employee suspects that a minor is attempting to purchase a tobacco item, the retailer or retailer's employee shall request and examine identification from the purchaser and positively establish the purchaser's age as 19 years or greater before allowing the purchase of the tobacco item to occur.

Section 14. *NOTIFICATION.*

All retailers selling cigarettes or tobacco products must clearly display the following sign at the entrance to the store selling the product:

IT IS ILLEGAL TO SELL OR PERMIT TO BE SOLD ANY
TOBACCO PRODUCTS TO ANY PERSON UNDER THE
AGE OF NINETEEN (19) YEARS OF AGE

The notice must be black letters at least one inch in height on a white background, and will be made available through the City Clerk at the request of any retailer.

Section 15. *NUISANCE.*

Any violation of this ordinance is hereby declared to be a nuisance. In addition to any other relief provided by this ordinance, the City may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this ordinance. Such application for relief may include seeking a temporary restraining order, a temporary injunction and permanent injunction.

Section 16. *MISCELLANEOUS.*

(a) *Construction with Other Laws.* Nothing in this ordinance excuses noncompliance with any state, federal or local law or any rule or regulation which prohibits smoking.

(b) *Validity or Constitutionality.* If any portion of this ordinance shall be held unconstitutional, invalid, or unenforceable, such holdings shall not affect the remaining portions nor render the remaining portions invalid, and to that end the provisions hereof are declared to be severable.

Section 17. *ORDINANCES REPEALED.*

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

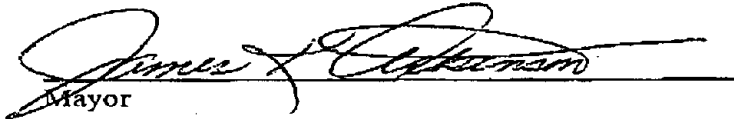
Section 18. *EFFECTIVE DATE.*

That this ordinance shall become effective at 12:01 a.m. on October 1, 1995, or its otherwise becoming a law.

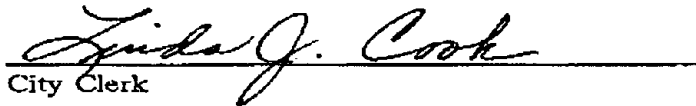
ADOPTED this the 14th day of August, 1995.


President of City Council

APPROVED:


Mayor

ATTEST:


City Clerk

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